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9
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11 MATSURA

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 UNITED STATES,

16 Plaintiff,

17 vs.

18 JOSE SUSUMO AZANO
19 MATSURA,

20 Defendant.
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CASE NO. 14-cr-0388-MMA

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTIONS:
(1) SECOND SUPPLEMENTAL
MOTION FOR DISCOVERY;
(2) TO BE RELEASED FROM THE
DISCOVERY PROTECTIVE
ORDER**

**Time: 2:00 p.m.
Date: August 25, 2014**

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I.

INTRODUCTION

The government indicted Mr. Azano for a single count of violating campaign financing laws. The government has thus far produced a large volume of discovery to the defense, but there are significant documents and information that are missing. Mr. Azano now seeks Court intervention for additional discovery by filing this Second Supplemental Discovery Motion requesting these missing documents and information information required for several pretrial and trial motions.

In motions Mr. Azano will argue that government misconduct, negligence, and ineptitude warrant relief. If there is a trial, he will also argue that government conduct (whether negligent or intentional) creates a reasonable doubt in this case and impeaches the testifying agents and officers. *See, e.g. Kyles v. Whitley*, 514 U.S. 419, 446-454 (1995) (discrediting the caliber of a police investigation is exculpatory and such evidence must be disclosed under *Brady v. Maryland*).

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II.
FACTS

A. Sempra

Mr. Azano and Sempra Energy (“Sempra”) have been litigating against each other in Mexico and the United States for years. The simple version of that litigation is that Mr. Azano assisted Ramon Sanchez-Ritchie in a civil case in Mexico, where Sempra has attempted to remove Mr. Sanchez-Ritchie from certain real estate near Ensenada, Baja California (the “Sanchez-Ritchie property”). Sempra covets the Sanchez-Ritchie property, which it needs to legally operate its liquefied natural gas terminal near Ensenada, Baja California, Mexico (the “Sempra LNG terminal”). Sempra (and/or its subsidiaries) has apparently spent close to a billion dollars¹ on the Sempra LNG terminal. Mr. Sanchez-Ritchie has won all the court battles in Mexico and continues to own the property that Sempra covets for its billion dollar investment.

¹ See, http://www.energy.ca.gov/lng/documents/costa_azul/2006-07-25_Keller_Costa_Azul_LNG_Interagency.PDF

1 Mr. Sanchez-Ritchie sued Sempra in the United States District Court
2 for the Southern District of California in case 10-cv-1513-CAB. On
3
4 September 18, 2012 Sempra counter-claimed and added Mr. Azano as a
5
6 counter-defendant, alleging RICO violations based on bribery and
7
8 extortion (which are false). On October 13, 2013, Judge Bencievengo
9
10 dismissed the Counter-Claim in its entirety and with prejudice.

11 The discovery provided by the government to date reveals that the
12
13 U.S. Attorney investigated Sempra for Foreign Corrupt Practices Act
14
15 (“FCPA”) violations in the Spring of 2011, in the middle of the Azano-
16
17 Sempra litigation. Those allegations were based on suspicions that
18
19 Sempra engaged in bribery of Mexican officials related to the Sempra LNG
20
21 terminal. Although heavily redacted, the discovery shows that on March
22
23 15, 2011 an FBI-302² reported that the evidence “clearly” indicated “the
24
25 existence of a *quid pro quo* arrangement” with regard to a \$7 million trust
26
27 created by Sempra “in exchange for key permits required from the City of
28

² An “FBI-302” is a report used by the FBI to record investigative activity.

1 Ensenada to build the Sempra LNG plant.” The FBI recommended
2 opening a full FCPA investigation of Sempra.
3

4 According to another FBI-302, approximately six weeks later, on
5 April 29, 2011, lawyers from the Jones Day law firm met with the Deputy
6 Chief of the DOJ Fraud Section, an Assistant U.S. Attorney, and an SEC
7 attorney (all names are redacted from the discovery, but as noted below,
8 news reports state the names of the participants). The Jones Day firm
9 reported that their investigation of their client showed no wrongdoing. A
10 Jones Day attorney (apparently, the name is redacted) then “renewed his
11 request” that the DOJ investigate a person whose name is redacted.
12

13 Discovery and press reports clarify that Robert S. Brewer, Jr.² and Jones
14 Day asked the DOJ to investigate Mr. Azano for the exact same allegations
15 Sempra later brought in their counter-claim and which Judge Bencivengo
16 dismissed.
17

18 Less than two weeks after the FBI-302 documenting the April 29,
19 2011 meeting was written, on June 1, 2011 U.S. Attorney Laura Duffy
20
21
22

1 wrote Robert S. Brewer, Jr.,⁴ of Jones Day a letter apparently co-signed by
2 Deputy Chief of the Fraud Section at Main Justice, Charles LaBella (Mr.
3 Brewer's former law partner) advising that they were dropping their
4 Sempra investigation after the internal self-investigation and presentation
5 by Mr. Brewer and Jones Day.
6
7

8
9 Within a few weeks, the U.S. Attorney filed an Application for Order
10 Authorizing Disclosure of Subscriber and Other Information (the
11 "Application") in case 11 MC 0853, signed by Assistant U.S. Attorney
12 Timothy Perry on behalf of U.S. Attorney Laura Duffy.⁵ The Application
13 parrots almost verbatim the now dismissed Sempra allegations about
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(Footnote cont'd from previous page.)

20 ³ Mr. Brewer also defended Sempra against whistleblower allegations
21 regarding the FCPA violations discussed above.

22 ⁴ In addition to convincing the government on behalf of Sempra to
23 investigate the spurious and later dismissed claims against Mr. Azano, Mr.
24 Brewer appeared before this Court in a personal capacity, while a
25 candidate for DA. He asked this Court to release from a protective order a
26 letter of reference written on behalf of Mr. Azano's son by DA Dumanis.
27 At that time, Mr. Brewer repeated false accusations that Ms. Dumanis may
28 have had a *quid pro quo* relationship with Mr. Azano. As noted below (*see*,
footnote 6), DA Dumanis has denied any such relationship and the letter
itself dispels any notion that it was written for any reason other than as a
favor after she was manipulated by the government's informant, Ernie
Encinas.

1 bribery and extortion. The Application also asserts that “Agents of
2 Sempra are in possession of an email chain in which Azano participated.”
3
4 (11 MC 0853 Application, page 5, lines 9-10.)

5 Mr. Azano believes that those “Agents of Sempra” illegally obtained
6 that email chain (which may contain privileged communications), and in
7 any event the U.S. Attorney’s Office appears to have not told the
8
9 Magistrate Judge the provenance of the e-mail chain. The government
10 cites that “email chain” in at least 8 pleadings filed with this Court asking
11
12 for permission to perform searches but seems to never have explained how
13
14 Sempra (much less the government) obtained that email chain.
15

16 Because the Application in large part merely regurgitates the
17
18 allegations of bribery and extortion that were dismissed by Judge
19
20 Bencivengo, it gives -- at the very least -- the appearance that the U.S.
21 Attorney's Office is acting on behalf of Sempra against Sempra’s perceived
22
23 antagonist, Mr. Azano. Furthermore, the Application affirmatively
24

25 _____
26 *(Footnote cont'd from previous page.)*

27 5 The Application appears to be the first use of judicially authorized
28 investigative tool in the investigation of Mr. Azano.

1 misrepresents that “the prosecution team involved in that investigation [of
2 Sempra] does not overlap with the team handling the investigation of
3 Azano and others.” (11 MC 0853 Application, page 5, lines 14-20.)

4
5 A cursory review of the discovery, however, reveals that the same
6 FBI special agent who recommended a full FCPA investigation of Sempra
7 is *the same agent who continues to act as case agent on Mr. Azano’s case*. That
8 agent stated on tape that she had learned of Mr. Azano while investigating
9 Sempra. *See*, recording 2737049.0003 produced in discovery, at
10 approximately 6:05. The application does not clarify what “prosecution
11 team” means, but case law show that the Department of Justice includes
12 FBI agents when describing a “prosecution team.” *See, e.g. United States v.*
13 *Neill*, 952 F. Supp. 834, 838 (D.C. Dist. 1987) (IRS Special Agent member of
14 “prosecution team”); *United States v. Moussaoui*, 382 F. 3d 453, 460 (4th Cir.
15 2004) (members of the “prosecution team” included FBI Special Agents).

16
17 In or about August 2012, the government asked the Court for and
18 obtained a delayed-notification (or, “Sneak and Peak”) warrant allowing
19 them to search offices used by Mr. Azano. Among other things, the
20 affidavit to support the Sneak and Peek Warrant argued the same Sempra
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1 allegations (dismissed by Judge Bencievengo) in order to justify the secret
2 search. That warrant (which will be the subject of a later motion to
3 suppress) makes numerous and significant material misrepresentations
4 and omissions, including misstatements of law (characterizing innocuous
5 conduct as criminal) and misstatements of fact based upon implausible
6 and illogical inferences.
7
8
9

10 Finally, the Chief of Corporate Security at Sempra is Dan
11 Dzwilewski, formerly the Special Agent in Charge of the FBI in San Diego
12 from 2003-2007.⁶ During that time, he was presumably the supervisor for
13 some or all of the case agents in this case earlier in their careers.
14
15

16 In sum, the evidence available to the defense gives at least the
17 appearance of the government pursuing Mr. Azano on behalf of Sempra,
18 after dismissing the Sempra investigation based on Sempra's investigation
19 of itself.⁷ The government has also created the appearance of misleading
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24 ⁶ See Mr. Dzwilewski's profile on LinkedIn:
25 <https://www.linkedin.com/pub/dan-dzwilewski/12/a50/343>).

26 ⁷ The local media has reported on this extensively, and has noted that this
27 fails the "smell test." In any event, the SEC appears to have reopened the
28 investigation of Sempra. See,
<http://www.10news.com/news/investigations/sec-begins-new-probe-into->

(Footnote cont'd on next page)

1 the Court to obtain Court ordered warrants and orders allowing the search
2 of Mr. Azano's property just after dismissing the Sempra allegations. If
3 that appearance of conflict arises to an actual conflict, the defense will
4 move for various remedies. However, as noted below, the simple
5 appearance of that conflict supports additional discovery.
6
7

8 **B. Rogue Agents**

9
10 For years, the Department of Homeland Security ("DHS") has
11 engaged in a wide ranging, baseless, and bullying investigation of Mr.
12 Azano. Citing unnamed confidential sources, DHS has investigated Mr.
13 Azano for a wide range of offenses that he did not commit, including gun
14 running, money laundering, and other serious crimes. Neither agency has
15 ever found any evidence of such crimes - because none exists - and in the
16 Spring of 2013 Mr. Azano wrote a letter of complaint to DHS regarding the
17 harassment.
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20 Despite not finding any evidence of any crime, DHS continued to
21 harass Mr. Azano, his family, and his employees. For instance, defense
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(Footnote cont'd from previous page.)

28 [sempra-energy-over-bribery-allegations-031714](#) (Naming Jones Day and

(Footnote cont'd on next page)

1 investigation has revealed that in July 2012 DHS agents came to the home of
2 a pilot who worked for Mr. Azano. According to Mr. Azano's pilot, the
3 agents then began a series of harassing calls as well. DHS asked the pilot
4 to become a paid informant, promising that he would get a percentage of
5 any money seized from Mr. Azano. DHS also asked the pilot to illegally
6 search Mr. Azano's personal belongings for them. The discovery notes
7 that the DHS agent was Special Agent John Chakwin (Homeland Security
8 Investigations).

13 When Mr. Azano's pilot informed DHS that he had never seen any
14 illegal activity by Mr. Azano, DHS offered to clear up "anything from your
15 past." Mr. Azano's pilot said that he would tell them about any crime he
16 saw, but he knew of no criminal conduct by Mr. Azano. DHS agents
17 continued harassing the pilot, and even gave him a phone to use to call
18 DHS agents. Among other threats, the agents told the pilot that "you are
19 refusing to cooperate and you will go down with [Mr.] Azano when he
20 goes to the grand jury." Those agents stated that Mr. Azano was

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27 *(Footnote cont'd from previous page.)*

28 Mr. Brewer as the attorneys involved).

1 dangerous to the pilot and went so far as to frighten the pilot's children.

2 The agents continued harassing the pilot for months.

3
4 The pilot asked the agents to stop harassing him and his family, and
5 stopped returning their calls. In response, the agents pounded on the door
6 to the pilot's home, scaring his wife and children. The agents told the pilot
7 that because the pilot was not returning their calls they thought Mr. Azano
8 had killed him. The agents said if the pilot did not keep in contact, they
9 would return to his house, walk in his office, or do whatever they wanted
10 to see him. The pilot has stated again and again that he has never seen Mr.
11 Azano do anything suspicious or illegal.
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16 Other government harassment included patting down Mr. Azano's
17 very young child, extended border searches, and other acts. Other pilots
18 and employees have heard DHS ICE agents falsely accusing Mr. Azano of
19 being an arms dealer, and those false accusations seem to have found their
20 way into DHS/ICE computer systems.
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24 The DHS investigation seems to stem from at least one mysterious
25 and unnamed "Source of Information" ("SOI"). That SOI noted only that
26 Mr. Azano is wealthy and travels a lot. *See* discovery produced at
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1 EM_AGT RPT_ROIs_000065, 000090, 001312.⁸ The defense, below, is
2 asking for discovery about that SOI(s).
3

4 **C. The Government's Two Witnesses: Ernie Encinas, Marc**
5 **Chase and Their Manipulation of Mr. Azano and San**
6 **Diego Politicians**

7 The government has two important witnesses, Ernie Encinas
8 ("Encinas") and Marc Chase ("Chase"). Encinas was a contractor whose
9 company provided security services for Mr. Azano and his family but who
10 never participated in any other business of Mr. Azano. Encinas had been
11 with San Diego Police Department ("SDPD") for over 30 years and owned
12 a business called Coastline Protection and Investigations, Inc.
13 ("Coastline"). Through Coastline and other businesses, Encinas provided
14 security guards and consulting services to establishments that were, or
15 which hoped to become, licensed to serve alcohol, including several bars
16 and nightclubs in the Gas Lamp District. See, EM_PLDGS_00000195.
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25 ⁸ Other DHS reports note "a SOI" that may or may not be the same SOI
26 related to the purported information about Mr. Azano. See, discovery
27 produced as EM_AGT RPT_ROIs_1491-1548, 1549-1567. As noted below,
28 the defense is entitled to discover the identity of this SOI and/or whether
this is the same SOI throughout this case.

1 Encinas was aware that Mr. Azano was very generous and regularly
2 donated hundreds of thousands of dollars to worthy causes.⁹ Mr. Azano
3 became concerned about police widows, and asked Encinas to whom he
4 should donate \$100,000 to benefit them; Encinas had a “better” idea: he
5 told Mr. Azano to help the campaign of a “friend” running for political
6 office who would help police widows. As Encinas later admitted to the
7 FBI when asked why Mr. Azano donated to DA Dumanis: “Because of me.
8 Bonnie is a friend of mine.” Encinas later explained that he thought she
9 would help him in Encinas’s business in the Gas Lamp District. *See*,
10 2737049.003, at approx. 13:00 minutes.

11
12 In June 2013, the FBI told the court “[t]here is probable cause to
13 conclude that Encinas has sought to corruptly influence the SDPD through
14 bribes.” *See*, EM_PLDGS_00000245 (“Wiretap Application”). The Wiretap
15 Application argues that the government has evidence of corruption by
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24 ⁹ For instance, Mr. Azano donated: \$75,000 in 2011 for tsunami
25 relief/Asian Film Festival; \$50,000 to a grade school in 2011; \$250,000 in
26 2009 to a child in Mexico needing medical treatment; \$10,000 in 2011 to a
27 law enforcement foundation, among other things. He never sought or
28 received publicity for these acts of charity.

1 Encinas. According to the Wiretap Application, at least one SDPD officer
2 stated that Encinas "suggested that because of campaign contributions he
3 and others had made to a local elected official, his clients were going to get
4 what they wanted."
5

6
7 The FBI's belief that Encinas bribed and manipulated political
8 figures does not only impeach Encinas's credibility; it also affirmatively
9 exculpates Mr. Azano. There is no logical reason that Encinas would limit
10 his manipulation to politicians. Indeed, by October 2013, the FBI
11 concluded in an affidavit for a search warrant:
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14
15 On behalf of his clients Encinas has lobbied both
16 the SDPD and [former Mayor] Filner for among
17 other things licensing for a large downtown night
18 club. Insofar as Encinas perceives Azano's illegal
19 campaign contributions to have earned him special
20 access to Filner these lobbying activities reflect
21 Encinas's motive and state of mind in committing
22 the campaign finance fraud.

23 Among the politicians who Encinas manipulated is DA Bonnie
24 Dumanis. For instance, Encinas had Dumanis write a letter of reference
25 for Mr. Azano's son, despite the fact that DA Dumanis had never met the
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28

son.¹⁰ DA Dumanis denied writing that letter at the request of Mr. Azano, and instead wrote the letter at the request of Encinas. Discovery also shows that DA Dumanis called Encinas during the investigation. *Call* 2366.¹¹

Encinas's motive to support elected officials is plain from the discovery: he wanted their support to further his business in the Gas Lamp District (which it bears repeating had nothing to do with Mr. Azano) and he used Mr. Azano to financially support those politicians. For instance, Encinas viewed Mr. Azano as his "main money guy." He also bragged about "his resources" to support politicians and their support of his business, as when he complained about the SDPD Vice Squad harassing him, "but that, ya know, had Bonnie been there [elected mayor], ya know,

¹⁰ According to the Union Tribune, "In her television appearance [DA Dumanis] said she did not personally know the younger Azano. She said she wrote the letter at the request of Ernesto "Ernie" Encinas, a retired San Diego police detective who worked for Azano." *See*, <http://www.utsandiego.com/news/2014/Jul/09/dumanis-release-azano-letter/?#article-copy>

¹¹ There is no evidence in the discovery that DA Dumanis ever did anything illegal, corrupt, or unethical. Other than meeting Mr. Azano, DA Dumanis had no relationship of any sort with him or his family. It bears

(Footnote cont'd on next page)

1 Bonnie would have been taking care of business for me.” He also claimed
2 that Carl DeMaio “wanted my support” and “had – had I put all my en -
3 all my resources to uh, DeMaio, there’s a good chance he coulda won.”
4

5 See, 13-57-10 02187-001 at approx. 14:00.
6

7 The federal government ultimately turned Encinas into a
8 confidential informant before charging him with any crime. After co-
9 defendant Ravi Singh was arrested, Encinas discussed that arrest with Mr.
10 Azano while secretly recording him. Although Encinas had been well
11 prepared to try to obtain an admission, Mr. Azano repeatedly denied any
12 involvement in paying Mr. Singh for any campaign conduct or otherwise
13 violating the law. When Encinas asks what he should tell law
14 enforcement, Mr. Azano tells him that he would be happy to clarify
15 anything. See 2373049.002.wav.
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21 Likewise, Encinas also tried to trick Mr. Singh into saying he or Mr.
22 Azano had violated election laws. Mr. Singh advised Encinas that any
23 payment for his services related to the upcoming Dumanis DA reelection
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25

26 _____
27 *(Footnote cont'd from previous page.)*

28 noting that Encinas was able deceive and manipulate her as well as others,

(Footnote cont'd on next page)

1 campaign had to come from the campaign (in compliance with election
2 laws) and not from any outside source (in violation of the law). Mr. Singh
3 also pointed out that they had previously done campaign work for Bob
4 Filner in accordance with the law. *See* 2737049.005.wav.
5

6
7 Chase, the government's other witness/defendant owned car
8 dealerships where Mr. Azano purchased cars. They met in 2010, and
9 according to an FBI-302 that memorialized an interview of Chase, Chase
10 became "involved [with Mr. Azano] because Azano looked like he had
11 money." Also according to the FBI-302, "Chase's main purpose for
12 befriending Azano was to sell him things." However, at one point in their
13 "friendship" Mr. Azano received information that Chase was involved in
14 criminal wrongdoing. That information, according to Chase, "almost
15 killed the entire relationship between Chase and Azano." *See* EM_AGT
16 RPT_ROIs_001035-001051.
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23 Chase stated that he worked hard to get back in Mr. Azano's good
24 graces, including reaching out to Mr. Azano's employees and family for
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(Footnote cont'd from previous page.)

28 including Mr. Azano.

1 help, including Encinas. After some time (and convincing Mr. Azano he
2 was not a criminal), “Azano came to know Chase better and they became
3 friends again.” *See id.*

4
5 According to Chase, in the first half of 2011 Mr. Azano wanted to
6 buy Symbolic¹², Chase’s company. Chase wanted to sell because the
7 company owed a creditor millions of dollars. At that time, Mr. Azano did
8 not buy Chase’s company, and Chase believed that Mr. Azano’s reasoning
9 was because of rumors of Chase’s criminal activity. However, Azano did
10 agree to loan Chase \$3 million with a promissory note because Chase was
11 desperate to avoid bankruptcy. Chase has paid the note down by \$1
12 million. *See id.*

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18 Chase did not give up on selling Symbolic to Mr. Azano. In August
19 2012, Chase convinced Mr. Azano to attend a high end car show in Pebble
20 Beach, California. Chase and his brother sat with Mr. Azano, who bought
21 two cars. The FBI-302 reports, “Capitalizing on Azano’s high from the car
22 purchases at that moment, Chase made a quick deal with Azano to sell
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1 Azano 60 percent of Symbolic . . . and 40 percent of West Coast
2 Acquisitions.” *See id.*

3
4 According to Chase, Mr. Azano was to buy out a co-owner for
5 \$500,000 and give Chase specific property worth \$1 million. Chase and his
6 brother wrote out a document detailing the agreement and “push[ed]” Mr.
7 Azano to sign. Chase received the property, which he immediately sold
8 for \$1,025,000. Chase has never paid any of that back to Mr. Azano. *See id.*

9
10
11 According to Chase, Mr. Azano said he believed that he had an
12 ownership interest in Symbolic, introduced Chase as his business partner,
13 and as of 2014, according to the FBI-302, Mr. Azano “may still believe he
14 owns part of Symbolic.” A month after Chase manipulated Mr. Azano
15 into signing the agreement and giving him the \$ 1 million property, Mr.
16 Azano wrote a check to Symbolic for \$380,000. Later, Symbolic, West
17 Coast Acquisitions, and Chase wrote the checks to campaigns that form
18 part of the factual basis in his plea and which total a fraction of the
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25 _____
(Footnote cont'd from previous page.)

26 12 Symbolic is the “dba” of South Beach Acquisitions, the company the
27 government claims made the payments to the campaigns. *See*, Chase Plea
28 Agreement, ¶¶ 10-14.

1 \$380,000. According to the FBI-302, "Encinas instructed Chase on how to
2 make the contributions." Chase also wrote the checks as Encinas directed
3 and then gave them to Encinas in his upstairs office. EM_AGT
4 RPT_ROIs_001035-001051.
5

6 7 **D. Seized Evidence Has Been Provided to Third Parties**

8
9 Very quickly after the search of Mr. Azano's residences, third parties
10 leaked information to others that could only have come from the materials
11 seized from Mr. Azano. Mr. Azano would prefer to make an in camera
12 showing with regard to this issue as it reflects attorney-client
13 communications and attorney work-product. Nonetheless, he supports
14 this request for discovery of communications between the government and
15 third parties with this proffer.
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18

19 20 **III.**

21 **SECOND SUPPLEMENTAL DISCOVERY MOTION**

22 Mr. Azano has repeated these requests in Exhibit A, without
23 argument, to aid the Court in ruling on the individual requests.
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1
2
3 **A. Discovery Needed for Recusal Motion Based on U.S. Attorney**
4 **Conflict**

5 U.S. Attorney Laura Duffy has declared a conflict of interest in this
6 case, but her office continues with the prosecution. That alone creates the
7 appearance of a conflict of interest by the entire U.S. Attorney's Office that
8 should be explored by this Court and the defense to see if the entire U.S.
9 Attorney's Office should be conflicted off the case.
10

11
12 According to some pleadings filed by the United States, citing 28
13 U.S.C. § 515 (*see*, for instance, a Motion for Service of Inventory and Order
14 Thereon filed April 8, 2014 EM_PLDG_-S_2364), the United States has
15 recused U.S. Attorney Laura Duffy, and appointed Cindy Cipriani as the
16 "Acting U.S. Attorney" for this case. Other pleadings in this case simply
17 note that Ms. Cipriani is the "Acting U.S. Attorney" with no other
18 explanation.
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22
23 The U.S. Attorneys Manual, § 3-2.170, explains the process when U.S.
24 Attorneys or their offices have a conflict (emphasis added):
25

26 When U.S. Attorneys, or their offices, become
27 aware of an issue that could require a recusal . . . ,
28

1 they must contact General Counsel's Office (GCO),
2 EOUSA. . . .

3 A U.S. Attorney who becomes aware of
4 circumstances that might necessitate a recusal of
5 himself/herself or of the entire office, should
6 promptly notify GCO, EOUSA, the USAO will
7 submit a written recusal request memorandum to
8 GCO. . . (see USAM 3-2.300) pursuant to 28 U.S.C.
9 Sec. 515. See USAP 3-2.170.001 (M).

10 The United States has not explained the conflict in this case to the
11 Court or to the defense, nor has it explained how the U.S. Attorney could
12 have a conflict.

13 An impartial prosecutor is an essential feature of the accused's Sixth
14 Amendment right to a fair trial. *Berger v. United States* 295 U.S. 78, 88 (1935);
15 *People v. Lyons* 47 Cal.2d 311, 318 (1956); *see also People v. Trevino* 39 Cal.3d
16 667, 681 (1985). A prosecutor with a personal and professional interest in the
17 investigation, case filing, and conviction of a defendant is the antitheses of an
18 impartial prosecutor.

19 As noted by the United States Supreme Court:
20
21

22 Prosecution by someone with conflicting loyalties
23 'calls into question the objectivity of those charged
24 with bringing a defendant to judgment.' [Citation.]
25 It is a fundamental premise of our society that the
26 state wield its formidable law enforcement powers in
27
28

1 a rigorously disinterested fashion, for liberty itself
2 may be at stake in such matters.

3 *Young v. United States* 481 U.S. 787, 810 (1987).

4 Without additional discovery, neither this Court nor the defense can
5 be assured that the AUSAs handling this case are conflict free. For
6 instance, if Ms. Duffy has a conflict, but continues to decide personnel and
7 professional issues for these AUSAs, there is an appearance that the
8 decision making of the AUSAs is subject to conflicting loyalties.
9
10

11 Thus, the defense requests that this Court order the U.S. Attorney to
12 provide the following discovery under Federal Rules of Criminal
13 Procedure, Rule 16(a)(1)(E)(i) (“material to preparing the defense”) and
14 under the Sixth Amendment:
15
16
17

- 18 1. The “written recusal request memorandum to GCO,” as
19 required by the U.S. Attorney’s Manual, 3-2.170.
- 20 2. The reason for the recusal of the U.S. Attorney in this
21 case.
- 22 3. E-mails, documents, letters, memoranda, or any other
23 evidence (collectively, “communications”) of any conflict.

24 **B. Discovery Needed for Dismissal Motion and To Discredit the**
25 **Government Investigation at Trial**

26 The discovery in this case shows many troubling issues related to
27 conflicts in the investigation and prosecution of Mr. Azano, as noted
28

1 above. The defense requests that this Court order the U.S. Attorney to
2 provide the following discovery under Federal Rules of Criminal
3 Procedure, Rule 16(a)(1)(E)(i) (“material to preparing the defense”), *Brady*
4 *v. Maryland*, and *Kyles v. Whitely, supra* (discrediting the caliber of a police
5 investigation is exculpatory and such evidence must be disclosed under
6 *Brady v. Maryland*):
7
8
9

- 10 1. Any written or recorded communications between any
11 Jones Day attorney and/or Robert S. Brewer, Jr. (or any
12 other law firm) and any law enforcement agency
13 (including the Office of the U.S. Attorney) regarding
14 allegations about any conduct (criminal or otherwise) by
15 Mr. Azano or any person or entity related to him in any
16 way.
- 17 2. Any written or recorded communications between any
18 member of the “prosecution team” (including agents)
19 and any employee or agent of Sempra (including Dan
20 Dzwilewski), or any subsidiary of Sempra or related
21 company.
- 22 3. Any written or recorded communications between
23 Sempra and SDPD, any other law enforcement agency
24 (such as DHS -including ICE Special Agent John
25 Chakwin), or any other third party regarding Mr. Azano.
26
27
28

4. Any documents or other information about the “Source of Information” relied upon by DHS in its investigation of Mr. Azano.
5. In *United States v. Henthorn*, 931 F. 3d 29, 31 (9th Cir. 1991), the government must examine personnel files of law enforcement agents for *Brady* information. In this case, the defense asks that the government perform a *Henthorn* review for any evidence that any agent has been disciplined or reprimanded in any way related to any investigation of Mr. Azano or any other person or entity.
6. Reports, memoranda, and any evidence that shows Sempra’s involvement in the LNG issues in Mexico, in particular, anything from the new SEC investigation of Sempra.
7. Any evidence of government negligence in the investigation of Mr. Azano, including any information 1) that calls into question any reasons raised by DHS for their investigations of Mr. Azano and; 2) any evidence of any information provided to DHS or SDPD to support any investigation of Mr. Azano and any information that the initial information was false or inaccurate in any way.

C. Discovery Needed for Fourth Amendment Motions

The discovery in this case shows many issues related to the searches by the government, as noted above. In addition, the discovery shows only one Title III wiretap, on Encinas’s cell phone. However, Mr. Azano

1 believes that the government has intercepted his United States and
2 Mexican phones and performed other electronic surveillance without
3 revealing it to the defense.
4

5 The defense requests that this Court order the U.S. Attorney to
6 provide the following discovery under Federal Rules of Criminal
7 Procedure, Rule 16(a)(1)(E)(i) (“material to preparing the defense”) and
8
9 under the Fourth and Sixth Amendments:
10

- 11 1. Correspondence between agents and officers or any private
12 individual (such as an employee or attorney for Sempra)
13 regarding the drafting, editing, and preparation of any warrant
14 application.
15
- 16 2. Notes or reports prepared and relied upon by any agents in
17 preparing any warrant application.
18
- 19 3. Any documents or other information (including
20 “correspondence,” as defined above) regarding the provenance
21 and other information related to the email chain referenced by
22 the government to the Court: “Agents of Sempra are in
23 possession of an email chain in which Azano participated.” (11
24 MC 0853 Application, page 5, lines 9-10 as well as other
25 pleadings.)
26
- 27 4. Any materials or correspondence related to any electronic
28 surveillance of Mr. Azano, his family, his colleagues, or his
businesses conducted by any agency (or contractor for any

1 agency), including the NSA, CIA, FBI, DHS, or the U.S.
2 Attorney.

3
4
5 **D. General Discovery Needed**

6
7 The defense requests that this Court order the U.S. Attorney to
8 provide the following discovery:
9

- 10 1. Any evidence of investigative incompetence or worse, which
11 as noted above is discoverable under *Brady v. Maryland*, 373
12 U.S. 83 (1963) and Federal Rules of Criminal Procedure, Rule
13 16(a)(1)(E)(i) (“material to preparing the defense”).
- 14 2. Rough notes of any interviews. In particular, any rough notes
15 of any interview of Mr. Azano, who notified arresting agents
16 about what he perceived as wrongdoing by Jones, Day and
17 other participants in the Sempra case. Those agents failed to
18 record any such information in their official reports. Thus,
19 such notes are discoverable if they contain discrepancies, such
20 as omissions of pertinent information. *See, e.g. See Brady v.*
21 *Maryland*, 373 U.S. 83 (1963); *Giglio v. U.S.* 405 U.S. 150 (1972);
22 *United States v. Alvarez*, 86 F. 3d 901, 904-905 (9th Cir. 1996)
23 (citing *Kyles v. Whitely, supra*).
- 24 3. Any reports, notes, recordings or other evidence of corrupt
25 activity by Encinas in relation to his business, as alleged in the
26 affidavits for warrants.
27
28

4. Any notes, correspondence, documents or other evidence related to any promises made to Encinas and Chase to not prosecute them for additional crimes.
5. Any communications (recorded or otherwise) between Encinas and any political or elected official.
6. Any names, identifying information, and all other information related to any "Sources of Information" referenced in any investigative report or affidavit.
7. Any evidence related to a State Department or other "clearance" for Mr. Azano or any of his business entities to sell United States technologies overseas.
8. Any press releases by any government agency regarding Mr. Azano or any related defendant. Mr. Azano is entitled to a fair trial, and the defense is entitled to know everything that the government has told the public about this case.
9. Any materials related to any agreements or alleged agreements between Chase and Mr. Azano.
10. Any correspondence between government counsel and counsel for any government witness (including Chase and Encinas), which is discoverable under *United States v. Sudikoff*, 36 F. Supp. 2d 1196, 1206 (C.D. Cal. 1999).¹⁴

¹⁴ The District Court's order in *Sudikoff, supra*, at 1206 was as follows:

The government must disclose to the defendants all proffers by any witnesses receiving any benefit, whether immunity or leniency, in return for testimony. Included in this category are any proffers made by lawyers for such witnesses. By 'proffers' the Court

IV.

MOTION TO BE RELEASED FROM THE PROTECTIVE
ORDER

The defense is not allowed to use the actual documents provided in discovery in any proceeding. Mr. Azano asks to be relieved of that order so as to litigate motions in this case by presenting the relevant discovery to the Court.

(Footnote cont'd from previous page.)

refers to statements that reflect an indication of possible testimony, whether or not it seems likely that the witness would actually so testify. In addition, the government must disclose any notes or documents created by the government that reflect this information. Further, the government must disclose any material that indicates any variations in the witness's proffered testimony.

The government must also disclose to the defendants any information in its possession that reveals the negotiation process by which the immunity agreement was reached. This includes materials authored by a witness, a witness's lawyer, or the government.

V.
CONCLUSION

For the foregoing reasons, this Court should grant the above motions.

Dated: July 30, 2014

Respectfully submitted,
/S/ Knut S. Johnson
Knut S. Johnson, Esq. for
Jose Susumo Azano Matsura